UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE, Individually, and,
As Next of Friend of JULIE DOE, a Minor.

Plaintiffs,

-- v. --

MYSPACE, INC.,
and NEWS CORPORATION.

Defendants.

No. : 06-cv-7880 (MGC/AJP)

AFFIDAVIT OF CLIFFORD THAU IN SUPPORT OF MYSPACE, INC.'S MOTION TO TRANSFER

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

CLIFFORD THAU, being duly sworn, says:

1. I am a partner with Vinson & Elkins LLP, attorneys for MySpace, Inc. ("MySpace") in the above-captioned matter, and a member of the Bar of the Court; I am submitting this affidavit in support of MySpace's Motion to Transfer and accompanying Memorandum of Law.

2. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs' Original Petition, filed in *Doe v. Myspace, Inc.*, No. D-1-GN-002209 (261st Dist. Ct., Travis County, Tex. Jun. 19, 2006).

3. Attached hereto as Exhibit B is a true and correct copy of Plaintiffs' First Amended Original Petition, filed in *Doe* v. *Myspace*, *Inc.*, No. D-1-GN-002209 (261st Dist. Ct., Travis County, Tex. Aug. 10, 2006).

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4. Attached hereto as Exhibit C is a true and correct copy of MySpace, Inc. and News Corporation's Brief in Support of First Amended Special Exceptions, filed in *Doe* v. *Myspace, Inc.*, No. D-1-GN-002209 (261st Dist. Ct., Travis County, Tex. Sept. 1, 2006).

5. Attached hereto as Exhibit D is a true and correct copy of Plaintiffs' First Amended Response to Defendants' Special Objections, filed in *Doe* v. *Myspace, Inc.*, No. D-1-GN-002209 (261st Dist. Ct., Travis County, Tex. Sept. 1, 2006).

6. Attached hereto as Exhibit E is a true and correct copy of correspondence from Plaintiffs' Counsel, dated Aug. 21, 2006, attaching Plaintiffs' First Set of Interrogatories to Defendants MySpace, Inc. and News Corporation, Plaintiffs' First Set of Requests for Production to Defendants MySpace, Inc. and News Corporation, and Plaintiffs' Requests for Disclosures to Defendants MySpace, Inc. and News Corporation.

7. Attached hereto as Exhibit F is a true and correct copy of Plaintiffs' Motion for Nonsuit, filed in *Doe v. MySpace, Inc.*, No. D-1-GN-002209 (261st Dist. Ct., Travis County, Tex. Sept. 27, 2006)

8. Attached hereto as Exhibit G is a true and correct copy of the Order Granting Plaintiff's Notice of Nonsuit Without Prejudice, filed in *Doe v. MySpace, Inc.*, No. D-1-GN-002209 (261st Dist. Ct., Travis County, Tex. Sept. 27, 2006)

9. Plaintiffs make the following allegations in their Verified Complaint:

   a. "On April 6, 2006 . . . a 19-year-old adult Myspace user (and a complete stranger) initiated contact with 14-year-old Julie via Myspace . . . thus beginning a series of communications . . . ." (Verified Compl. at ¶ 28.)

b. "On May 12, 2006, the 19-year-old adult Myspace user lured 14-year-old Julie out and sexually assaulted her." (Verified Compl. at ¶ 29.)

c. "On May 13, 2006, Jane Doe called the Austin Police Department to report the sexual assault of her minor daughter, 14-year old Julie." (Verified Compl. at ¶ 30.)

d. "A detective from the Child Abuse Investigations Unit of the Austin Police Department conducted an investigation [of the alleged sexual assault]." (Verified Compl. at ¶ 31.)

e. "In a videotaped confession, the 19-year-old adult space Myspace user admitted to initiating contact with 14-year-old Julie on Myspace, soliciting her personal information, gaining her personal trust, and then sexually assaulting her." (Verified Compl. at ¶ 31.)

f. "The 19-year-old adult Myspace user was . . . arrested by the Austin Police Department and indicted by the Travis County District Attorney's Office for Sexual Assault, a 2nd degree felony." (Verified Compl. at ¶ 31.)

g. Julie Doe experienced "physical, psychological and emotional trauma . . . [of which MySpace and News Corporation] are the proximate cause." (Verified Compl. at ¶ 43.)

h. MySpace made "material and false representations [that] were untrue, deceptive and misleading" (Verified Compl. at ¶ 54), including "posted express representations on MySpace" (Verified Compl. at ¶ 54), representations made or summarized on the CBS News website (Verified Compl. at ¶ 23), in Newsweek (Verified Compl. at ¶ 23), and in Business Week (Verified Compl. at ¶ 25), and "Defendants knew of MySpace's material and false representations, Plaintiffs relied on them, and Plaintiffs' reliance was justifiable" (Verified Compl. at ¶ 57).

i. "Defendants' material and false misrepresentations were the direct and proximate cause of Plaintiffs' injuries." (Verified Compl. at ¶ 58.)

j. Plaintiffs are entitled to recover damages for "compensatory and exemplary damages for Julie Doe's pecuniary loss, mental anguish, psychological trauma, pain and suffering, and emotional distress . . . as well as . . . medical and psychological counseling expenses." (Verified Compl. at 20.)

10. Given Plaintiffs' allegations, if this case is not dismissed on the pleadings, the testimony of the following potential nonparty witnesses and others located in and around Austin, Texas will be relevant in this matter and required for its resolution:

a. Pete Solis: Pete Solis is the adult MySpace user referred to in the Verified Complaint. He possesses material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe,
- the claim that Solis sexually assaulted Julie Doe,
- Solis's alleged confession to sexual assault,

- Julie Doe's claim to have relied on statements attributed to MySpace, and
- Julie Doe's claims that she has been injured and that MySpace caused that injury;

As Plaintiffs acknowledge, Solis has been indicted in Travis County, Texas for the alleged sexual assault and may only be available for trial (as a witness or party) in the Western District of Texas.

b. Detective Joel K. Pridgeon and other officers of the Austin Police Department: Officers of the Austin Police Department, as well as employees of the Travis County District Attorney's office, were responsible for investigating the alleged sexual assault and are likely to possess material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe,
- the claim that Solis sexually assaulted Julie Doe,
- Solis's alleged confession to sexual assault,
- Julie Doe's claim to have relied on statements attributed to MySpace, and
- Julie Doe's claims that she has been injured and that MySpace caused that injury.

c. Medical professionals: Medical professionals in and around the Austin, Texas area who were responsible for treating the physical injuries Julie Doe alleges she sustained are likely to possess material information concerning:

- the claim that Solis sexually assaulted Julie Doe,
- the claim that Julie Doe was injured thereby, and
- the extent of any such physical damages that may have been caused.

d. Mental-health professionals: Mental-health professionals in and around the Austin, Texas area who were responsible for any counseling or other psychological treatments that Julie Doe may have received are likely to possess material information concerning:

- the claim that Solis sexually assaulted Julie Doe,
- the claim that Julie Doe suffered mental anguish, psychological trauma, pain and suffering, and emotional distress thereby, and
- the extent of any such psychological damages that may have been caused.

e. Friends, family members and others familiar with Pete Solis: These people are likely to possess material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe,

- the claim that Solis sexually assaulted Julie Doe,
- Solis's alleged confession to sexual assault, and
- other pertinent issues.

f. Friends, family members and others familiar with Julie Doe: These people are likely to possess material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe,
- the claim that Solis sexually assaulted Julie Doe,
- Solis's alleged confession to sexual assault,
- Julie Doe's claim to have relied on statements attributed to MySpace,
- Julie Doe's claims that she has been injured and that MySpace caused that injury, and
- other pertinent issues.

g. Friends, family members and others familiar with Jane Doe: These people are likely to possess material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe,

- the claim that Solis sexually assaulted Julie Doe,
- Jane Doe's claim to have relied on statements attributed to MySpace,
- Jane Doe's claims that she has been injured and that MySpace caused that injury, and
- other pertinent issues.

11. In light of the allegations listed above in paragraph 9, if this case is not dismissed on the pleadings, I expect the following categories of potential physical evidence likely to be located in or around Austin, Texas to be relevant to this matter and required for its resolution:

a. Computers to which Julie Doe has access. Any computer used by Julie Doe during the relevant time period is likely to contain material information concerning:

   - communications between Solis and Julie Doe,
   - the May 12, 2006 meeting between Solis and Julie Doe,
   - the claim that Solis sexually assaulted Julie Doe, and
   - Julie Doe's claim to have relied on statements attributed to MySpace.

b. Computers to which Pete Solis has access. Any computer used by Pete Solis during the relevant time period is likely to contain material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe,
- the claim that Solis sexually assaulted Julie Doe, and
- Julie Doe's claim to have relied on statements attributed to MySpace.

c. Computers to which Jane Doe has access. Any computer used by Jane Doe during the relevant time period is likely to contain material information concerning:

- Plaintiffs' claim to have relied on statements attributed to MySpace, and
- the extent of Jane Doe's alleged pecuniary losses.

d. Pete Solis's phone records. These documents are likely to contain material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe, and
- the claim that Solis sexually assaulted Julie Doe.

e. Jane and Julie Doe's phone records. These documents are likely to contain material information concerning:

- communications between Solis and Julie Doe,

- the May 12, 2006 meeting between Solis and Julie Doe, and
- the claim that Solis sexually assaulted Julie Doe.

f. Documents and other evidence possessed by the Austin Police Department, to the extent available. Documents and other physical evidence in the possession of the Austin Police Department are likely to contain material information concerning:

- communications between Solis and Julie Doe,
- the May 12, 2006 meeting between Solis and Julie Doe,
- the claim that Solis sexually assaulted Julie Doe,
- Solis's alleged confession to sexual assault,
- Julie Doe's claim to have relied on statements attributed to MySpace, and
- Julie Doe's claims that she has been injured and that MySpace caused that injury.

g. Documents and other evidence possessed by the Travis County District Attorney's Office, to the extent available. Documents and other physical evidence in the possession of the Travis County District Attorney's Office are likely to contain material information concerning:

- communications between Solis and Julie Doe,

- the May 12, 2006 meeting between Solis and Julie Doe,
- the claim that Solis sexually assaulted Julie Doe,
- Solis's alleged confession to sexual assault,
- Julie Doe's claim to have relied on statements attributed to MySpace, and
- Julie Doe's claims that she has been injured and that MySpace caused that injury.

h. Medical records and billings. Documents and other physical evidence in the possession of the medical professionals in and around the Austin, Texas area who were responsible for treating the physical injuries Julie Doe alleges she sustained are likely to contain material information concerning:

- the claim that Solis sexually assaulted Julie Doe,
- the claim that Julie Doe was injured thereby, and
- the extent of any such damages or loss that may have been caused;

i. Psychological records and billings. Documents and other physical evidence in the possession of the mental-health professionals in and around the Austin, Texas area who were responsible for any counseling or other psychological treatments that Julie Doe may have received are likely to contain material information concerning:

- the claim that Solis sexually assaulted Julie Doe,

- the claim that Julie Doe suffered mental anguish, psychological trauma, pain and suffering, and emotional distress thereby, and

- the extent of any such damages or loss that may have been caused;

j. Jane Doe's financial records. Documents relating to Jane Doe's bank accounts and other financial information are likely to contain material information concerning Plaintiffs' claims of pecuniary loss.

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law, it is respectfully submitted that this Motion to Transfer should be granted in all respects.

Executed October 13, 2006.

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Attorney for Defendant MySpace, Inc.

Subscribed and sworn to before me on the 13th day of October 2006.

Notary Public, State of New York

DEBBIE E. GREEN
NOTARY PUBLIC, State of New York
No. 02GR6120
Qualified in New York County
Commission Expires June 27, 2008